

Message Text

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DRAFTED BY EB/IFD/BP:TASCHLENKER

APPROVED BY EB/IFD/BP:HJWINTER

JUSTICE:JDAVIDOW

L/EB:SBENSON

EUR/NE:JSHUMATE

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FM SECSTATE WASHDC

TO AMEMBASSY LONDON

UNCLAS STATE 213195

E.O. 11652: N/A

TAGS: ETRD, UK

SUBJECT: ANTITRUST: FOREIGN OCEAN CARRIERS AND JOINT
VENTURE BY COMPUTER MANUFACTURERS

REF: LONDON 13096

1. DAVIDOW WILL BE AVAILABLE FOR MEETINGS WITH DEPARTMENT OF TRADE AND GORDON BORRIE, FRIDAY, OCTOBER 1. HE WOULD PREFER LUNCHEON MEETING WITH EITHER PARTY AND EITHER MORNING OR AFTERNOON MEETING, WHICHEVER CONVENIENT, WITH THE OTHER. ALTERNATIVE MORNING OR AFTERNOON, WHICHEVER IS LEFT FREE, WILL BE DEVOTED TO MEETING WITH URANIUM INSTITUTE, WHICH DAVIDOW HIMSELF WILL ARRANGE. EMBASSY REQUESTED TO INFORM DEPARTMENT OF MEETING TIMES AND RESERVE SINGLE HOTEL ROOM WITH BATH IN DOLS 20-30 RANGE NEAR EMBASSY FOR EVENINGS OF SEPT. 30 AND OCT. 1.

2. IN REGARD TO QUESTION RAISED BY UK OFFICIALS OF PROPRIETY OF APPLYING U.S. DOMESTIC ANTITRUST LEGISLATION TO
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FOREIGN COMPANIES WHOSE ACTIONS MAY BE LEGAL UNDER FOREIGN

LAW, THERE IS AMPLE LEGAL STATUTE AND PRECEDENT IN U.S. LAW FOR SUCH ACTION. ANTICOMPETITIVE ACTIVITY IS PROHIBITED BY U.S. ANTITRUST LAWS IF IT HAS SUBSTANTIAL EFFECT UPON AMERICAN FOREIGN COMMERCE. FOR EXAMPLE, THE SHERMAN ACT

OF 1890 PROHIBITS PRACTICES "IN RESTRAINT OF TRADE OR COMMERCE...WITH FOREIGN NATIONS." THE CLAYTON ACT OF 1914 DEFINES "COMMERCE" SUBJECT TO THE ACT AS INCLUDING "COMMERCE...WITH FOREIGN NATIONS." SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT (1914) DEALING WITH UNFAIR METHODS OF COMPETITION APPLIES TO "COMMERCE...WITH FOREIGN NATIONS OR...BETWEEN...ANY STATE...OR FOREIGN NATION."

3. U.S. ANTITRUST DECISIONS INVOLVING UK FIRMS DATE BACK TO AT LEAST THE EARLY PART OF THIS CENTURY AND SOME HAVE BECOME WELL KNOWN PRECEDENTS IN AMERICAN COMMON LAW. THE U.S. SUPREME COURT HELD IN UNITED STATES VERSUS AMERICAN

TOBACCO CO. (221 U.S. 106-1911) THAT AN AGREEMENT ENTERED INTO IN GREAT BRITAIN BETWEEN AN AMERICAN COMPANY AND ITS ENGLISH COMPETITOR VIOLATED THE SHERMAN ACT.

4. TEST OF VIOLATION OF U.S. ANTITRUST LAW IS THE EFFECT OF AN ACTION ON U.S. COMMERCE, NOTWITHSTANDING THE FACT THAT THAT ACTION MAY BE LEGAL UNDER FOREIGN STATUTES.

5. ACTION: EMBASSY, AT ITS DISCRETION, MAY USE MATERIAL IN PARAS 2-4 IN FURTHER DISCUSSION OF THIS MATTER WITH UK OFFICIALS. DEPARTMENT WOULD APPRECIATE KNOWING ON WHICH OF THE CURRENT ANTITRUST CASES OR INVESTIGATIONS DEPARTMENT OF TRADE WILL CONCENTRATE DURING DAVIDOW VISIT. KISSINGER

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